

**OPEN RECORDS AND MEETINGS OPINION
2003-O-05**

DATE ISSUED: April 11, 2003

ISSUED TO: Glen Ullin City Council

CITIZEN'S REQUEST FOR OPINION

This office received a request for an opinion under N.D.C.C. §44-04-21.1 from Todd Brausch asking whether the Glen Ullin City Council violated N.D.C.C. § 44-04-19 by meeting with the Morton County Water Resource District Board on November 20, 2002, without proper notice.

FACTS PRESENTED

Sometime in early October 2002, the Glen Ullin city auditor happened upon two members of the Morton County Water Resource District Board (Water Board). The Water Board members told the city auditor that a particular drain obstruction issue was on their November 20, 2002, agenda and invited the Glen Ullin City Council (City Council) and officials to attend. The City Council members and officials had an interest in the drain obstruction issue because Mr. Brausch, a city resident, had constructed a retaining wall on his property along a creek that runs through Glen Ullin. The city alleged the retaining wall was obstructing a drain. Although the creek runs through the city, the city attorney has determined that the Water Board rather than the City Council has jurisdiction over the issue.

On his own accord, the city auditor proceeded to call the City Council members, the mayor, and the city attorney to see if anyone was available to attend the Water Board meeting. Attendance at the Water Board meeting by members of the City Council was not discussed at the October or November City Council meetings. The City Council did not delegate any authority to anyone attending the meeting to act or speak on its behalf.

On November 20, 2002, three of the seven members of the City Council (Mayor Chester Miller and council members Betty Delbarre and David Hoff) attended the regular meeting of

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the Water Board. Also attending the meeting were city auditor Duwayne Kinnischtzke and city attorney Mike Halpern.

Mr. Brausch discovered that members of the Glen Ullin City Council attended the Water Board meeting in a letter dated November 25, 2002, from the Water Board ordering him to remove the structure. Mr. Brausch claims, by attending the Water Board meeting, the Glen Ullin City Council held a meeting that was not preceded by proper notice.

ISSUE

Whether attendance of a Water Board meeting by three of the seven members of the Glen Ullin City Council on November 20, 2002, constituted a meeting of the City Council requiring public notice.

ANALYSIS

Any gathering of a quorum of the members of a governing body regarding public business is a "meeting." N.D.C.C. § 44-04-17.1(8)(a); N.D.A.G. 98-O-08. Three City Council members, including the mayor, attended the November Water Board meeting. The mayor of a city council is to be counted as a member of a governing body in determining whether a quorum is present so as to conduct business. N.D.A.G. Letter to Engelman (June 19, 1984); see also, N.D.C.C. § 40-08-01. Glen Ullin has a seven member City Council, including the mayor. Since only three were present at the Water Board meeting, no quorum was present.

Even without a quorum, the gathering of the three members could have been a meeting if the members were acting pursuant to authority delegated to them by the City Council. See N.D.A.G. 98-O-13; N.D.C.C. § 44-04-17.1(6). The city attorney informed this office that the City Council did not delegate to anyone attending the meeting the authority to act or speak on its behalf. This was confirmed by my office after examining the council's minutes for October and November. In fact, no mention of the meeting is made at all until the December 2002 minutes, where it is stated that "[s]everal Council Members attended the last regular monthly Morton County Water Resource District meeting." Consequently, the three members were not delegated by the Council to represent its interest at the Water Board meeting.

CONCLUSION

It is my opinion that attendance of a Water Board meeting by three of the seven members of the Glen Ullin City Council on November 20, 2002, did not constitute a meeting of the City Council and, therefore, no public notice was required.

Wayne Stenehjem
Attorney General

Assisted by: Mary Kae Kelsch
Assistant Attorney General

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